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LAW AND THE WOMAN IN ONTARIO

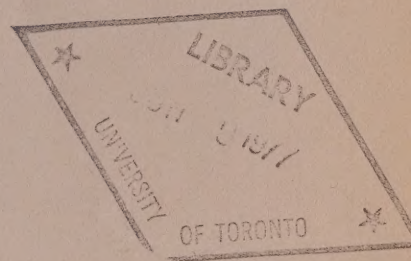
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FOREWORD

Throughout Canadian society, women have become increasingly aware of the necessity to know and understand the law as it affects their business, professional and personal lives.

The Murdoch case in Alberta focused the attention of women on the need to be fully informed about their rights and responsibilities under law and the necessity for a constant re-evaluation and improvement of legislation.

The law tends to reflect the social attitudes of the society within which it operates. Therefore, a greater knowledge of the law can enable you to influence your elected representatives as they seek to improve the legal framework of Ontario and Canada.

The law is constantly adjusting to respond to the changing patterns of society.

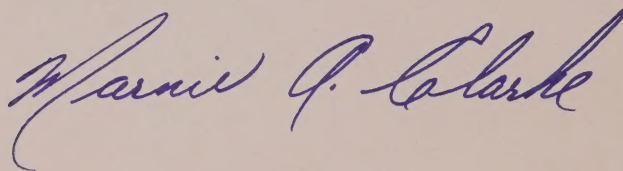
The area of Family Law will be undergoing many changes in the next few years as the contributions of both men and women to marriage and the family are accepted as equally valid and significant.

This booklet presents a more comprehensive outline of the law than any previous publication of the Bureau and includes a list of other useful sources of information. However, it can in no way substitute for professional counsel. Should you have particular legal problems, it is wise to consult a lawyer.

The status of women is improving slowly in Canada and it will take the efforts of all concerned citizens to maintain and promote the integration of women into every aspect of our social, political and economic life.

The structure of the law must be reinforced by institutional and educational programs to ensure that the options open to each individual are not limited by rigid definitions of sex roles or outmoded traditions which prevent the growth of a just and more humane society.

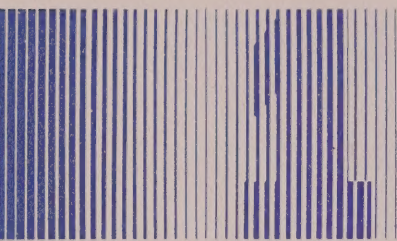
Special thanks are due to Karen Weiler of the Attorney General's office and to Jennifer Bankier and Ann Carlsen for contributing their legal expertise. I also wish to thank the staff of the Women's Programs Division of the Ministry of Labour for their assistance in the preparation of this publication.

A handwritten signature in dark ink, reading "Marnie J. Clarke". The signature is fluid and cursive, with the first name "Marnie" being more prominent and the last name "Clarke" following in a similar style.

Marnie Clarke
Director, Women's Bureau

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THE LAW AND THE COURTS

THE LAW AND THE COURTS

Where do the laws of Ontario come from?

They come from two sources—statute law and common law.

Who makes statute laws?

Statute laws can be passed by either the federal Parliament or the provincial Legislature. Acts passed by Parliament affect people in all provinces. Those passed by the Ontario Legislature apply to everyone living in this province.

What about common law?

Common law is based on the decisions of judges, both in Canada and Great Britain, going back to the 11th century.

Once a judge has made a decision about a particular issue, this decision is “the law” until it is over-ruled or modified by another court or changed by statute law.

Many of our property and damage laws are common laws. Common law plays an important role in statute law, too. When judges have to interpret an Act in a particular case, very often they look at the common law to see how it has been interpreted before.

What kind of court system do we have in Ontario?

It's called the adversary system.

Essentially, what this means is that two sides oppose each other in legal proceedings. A judge, several judges, or a judge and jury decide which side is correct under law.

What different kinds of proceedings are there?

There are two—civil and criminal.

What happens in civil proceedings?

Usually civil proceedings are between two private individuals. They can be held in a Small Claims Court, a County Court or the Supreme Court of Canada—depending on the seriousness of the case.

Small Claims Courts are set up for use by people who are contesting relatively small amounts of money—usually \$400 or less. The proceedings are simple, and no lawyer is needed. With County Courts or the Supreme Court, proceedings are more complex and generally require legal counsel.

In a civil proceeding a judgment will be made in favour of one person. The other person can appeal to a higher court to have the decision reversed or modified.

What about criminal proceedings?

These take place when the Attorney-General enforces the criminal law. The prosecutor is the state, and the defendant is the person or people accused of committing a crime.

Depending on the seriousness of the charge and the preference of the person accused of the crime, the trial may take place before a Provincial Court judge, a County Court judge, or a judge and jury.

The person accused has the absolute right to be represented by legal counsel. She or he is presumed innocent until proven guilty beyond a reasonable doubt.

THE LEGAL POSITION OF WOMEN

What is the legal position of women compared to that of men?

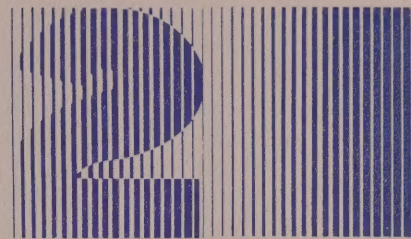
Most often, it is the same. In some instances, however, there are very real differences—some of which benefit women and others which discriminate against women.

Historically, women have been treated differently than men. They have often been regarded as less than equal. In a number of societies they were regarded as inferior beings or even as a form of property.

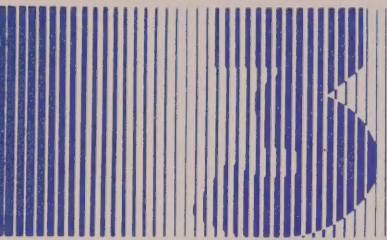
New laws being passed in Canada and Ontario are making men and women more and more equal under the law. The signs are that this trend will continue, and that at some point in the not-too-distant future men and women will be absolute equals under law.

At this time, the major areas where the law treats women differently than men are where our society has traditionally believed women need special protection—especially, in their roles as wives and mothers. This whole area is now under thorough review. The laws which exist were often passed with good intentions, but many people now believe they place undesirable burdens on both women and men.

LAW AND THE WOMAN IN ONTARIO



THE LEGAL POSITION OF WOMEN



POLITICAL RIGHTS AND RESPONSIBILITIES

POLITICAL RIGHTS AND RESPONSIBILITIES

When can I vote?

Women have the same voting rights as men. If you are a Canadian citizen and have lived in Ontario for the year prior to a provincial or municipal election and are 18 years of age or over, you are eligible to vote. In Ontario, men and women who are British subjects but not Canadian citizens also have the vote in municipal and provincial elections. But after June 1975, only Canadian citizens will be eligible to vote in federal elections.

Before an election, a voters' list is prepared in each riding. If your name appears on it, you only have to go to the designated polling station to vote. If, however, your name is not on the list, and you believe you are eligible, you should contact the returning officer in your riding and ask that your name be added to the voters' list.

Can I run for elected office?

If you are entitled to vote you are entitled to be a candidate. Exceptions are people who are government employees, holders of government contracts, or anyone who has been found guilty of corrupt practice within a certain number of years before the election. A member of a provincial legislature may not run in a federal election, unless he or she first resigns the provincial seat.

Do women have an equal responsibility to serve on juries?

Yes. All citizens have the responsibility of jury duty. Until recently, any woman called upon to serve on a jury could ask to be exempted from such service simply because of her sex. This is not true any longer. Today if you are between 18 and 69 years of age, reside in Ontario, and are a Canadian citizen, you are eligible for jury duty. You no longer need to own property. Some people can still be excused from jury duty on the basis of their occupation. If you are a public official of certain kinds, a lawyer, a politician or a medical practitioner, for instance, you are ineligible to serve on a jury; if your spouse is a lawyer, judge or policeman, neither of you can be a juror.

In a civil proceeding a judge may order that the jury be either all men or all women. Either side of the case can request that certain people not serve on the jury. No reasons have to be given, so a lawyer can, in fact, ask to exclude women or men if it might be advantageous to the case.

Is labour law federal or provincial?

Most working women in Ontario are covered by provincial labour laws, under the administration of the Ontario Ministry of Labour. The federal government legislates in labour matters only in certain industries and undertakings such as railways, airlines, banks, shipping companies and radio and television stations. Minimum standards and working conditions for employees in these types of operations are governed by The Canada Labour (Standards) Code, under the administration of the Canada Department of Labour.

Can an employer discriminate on the basis of sex?

No. The Ontario Human Rights Code prohibits discrimination because of sex or marital status in recruiting and hiring, training and apprenticeship, promotion and transfer, dismissal, terms and conditions of employment and membership in trade unions or self-governing professions.

Classifying a job as either "male" or "female" or maintaining separate seniority lists based on sex or marital status is illegal.

Can an employer advertise for an employee of one sex or the other?

Only if the employer has been given an exemption. Otherwise, advertisers may not place and the media may not publish "help wanted" advertisements indicating, directly or indirectly, that sex or marital status is a job qualification. Classified ad columns segregated according to sex are prohibited. Similarly employment agencies may not categorize jobs according to sex or marital status.

Can an employer refuse to hire or promote me because I have young children?

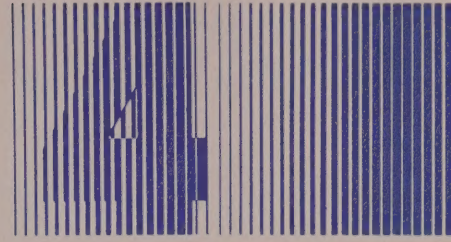
The practice of discrimination on the basis of parental status is unfair but at present, not illegal. If, however, you can find a male counterpart hired by the firm with a similar number of small children, you could file a complaint with the Human Rights Commission on the grounds of sex discrimination. In that case, different standards are being applied to male employees than to female employees.

Where can a complaint about sex discrimination be made?

Such complaints should go to the Ontario Human Rights Commission, Ministry of Labour, 400 University Avenue, Toronto or one of the regional offices located in Hamilton, Kenora, Peterborough, Kitchener, London, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay and Windsor. They can be made either by the person who believes she was discriminated against or by another person acting on her behalf and with her consent. Reprisals against any person making an inquiry or complaint under the Ontario Human Rights Code are prohibited. Complaints of reprisals will be investigated by the Commission in the same way as other complaints.

Can an employer pay different wages to people of different sex?

The Employment Standards Act specifically forbids this—if the wages are for substantially the same kind of work, performed at the same place of business, the performance of which requires equal skill and effort and responsibility, and the work is performed under the same conditions. There are four exceptions to this. If the employer has a seniority system, a merit system, a system that measures earning by quantity or quality of production, or a differential based on a factor other than the sex of the employees, then wage scales may differ.



What can a woman do if she feels she is receiving less pay than a man for doing the same work?

She should bring the matter to the attention of the Employment Standards Branch of the Ministry of Labour. Her name will not be revealed to her employer.

The Employment Standards Branch takes more than a passive role in this area. Its field officers make routine inspections in an attempt to make sure that equal work gets equal reward.

If it is found that a woman has been unjustly paid less than her male counterparts, wages she has lost will have to be paid to her retroactively up to the value of \$4,000.

What are Ontario's minimum wage laws?

The minimum wage in Ontario, for men or women, whether full or part-time employees, is \$2.65 an hour, as of March, 1976. Over the years the minimum wage has been increasing steadily. Your local Ministry of Labour Office can provide you with the latest figure.

What exceptions are there to the minimum wage laws?

Domestic workers in single private residences are not covered by this law, unless they are employed by an agency.

Students who are under 18 years of age, learners, construction workers, ambulance drivers, driver's helpers or first-aid attendants are subject to different minimum wage rates.

It is unlawful for an employer to hire someone as a learner or trainee with no pay during the training period.

For employees serving liquor on licenced premises, the minimum hourly wage is \$2.50.

What about room and board included in salary?

If employees receive accommodation and/or meals as part of their wages, the maximum the employer can charge against the minimum wage is \$11 a week for the accommodation and \$1.15 for each meal. The limit is \$24 a week for meals and a total of \$35 a week for both room and meals.

What can an employee do if she is being paid less than the minimum wage or if she has not been paid for work done?

She should inform the Employment Standards Branch of the Ministry of Labour. It has the authority to collect unpaid wages, including overtime pay and vacation pay, up to a maximum of \$4,000 for each employee.

Does an employer have to provide employees with a statement of earnings and deductions at the time wages are paid?

Yes. The statement must show the period of time for which the wages are being paid, the rate of wages and their total amount, a list of deductions and the reasons for these deductions, and the net amount being paid.

What hours can an employer ask an employee to work?

Ontario has a maximum work week of 48 hours for both men and women. Supervisory personnel and certain classifications of professional workers are exempted.

Under certain circumstances a permit to work overtime can be obtained by the employer from the Ministry of Labour. This permit allows up to 100 hours of overtime a year for each employee.

What about overtime pay?

Employers must pay overtime pay, at the rate of at least 1½ times the regular pay rate, to all employees who work more than 44 hours in any one week. Previously, the number of hours was 48, but this was changed on January 1, 1975.

Can retirement ages be set at 60 years for women and 65 for men?

No. Pensionable ages may be set below 65 years, provided that the same age is set for men as for women.

Can my employer offer me less favourable fringe benefits than my male co-workers receive?

No. Differentiation based on age, sex or marital status in pension and life insurance plans and long and short term disability insurance schemes including health and dental plans has been prohibited in Ontario since November, 1975. However, certain differences based on actuarial computations are permitted in some types of plans.

What statutory holidays is an employee entitled to?

There are seven—New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and Christmas Day.

To qualify to be paid for a statutory holiday an employee must have been employed for the three months immediately prior to the holiday, have worked at least 12 of the 30 days preceding the holiday, and work on her regular day of employment preceding and following the holiday.

If the employee agrees, the employer may, within 30 days, substitute another working day for the holiday.

If a qualified employee, without a substitute arrangement, works on a statutory holiday, she must be paid 1½ times her regular rate of pay. An employee who does not qualify for a statutory holiday must still be paid at a rate 1½ times the regular rate of pay for each hour worked.

Are all employees entitled to a vacation with pay each year?

All employees are entitled to vacation pay equal to at least four per cent of their wages in any year, whether or not they work the full year.

After the first year of employment, employees are entitled to an annual vacation with pay of at least two weeks. The employer can tell the employee when this vacation must be taken. If the vacation is for two weeks, it can be taken in two consecutive weeks or in two periods of one week each.

Are there special laws about night work?

No. The laws requiring employers to provide women working after midnight with transportation to and from home were repealed in January, 1975.

What breaks and meal periods is an employee entitled to?

Generally employees must be given a meal period of at least half an hour after every five hours of work.

Coffee breaks are not required by law. They are usually provided by an employer as part of good company and personnel practice.

For what reasons can I be fired from my job?

In the absence of a union contract, an employer has the common-law right to terminate an employee for virtually any reason. However, the employer cannot terminate anyone for reasons having to do with age, sex, national origin, race, creed, colour, or marital status. Neither can the employer terminate a pregnant woman, who has sufficient seniority to qualify for leave, just because of her pregnancy. An employee also cannot be terminated for having a garnishee put on her wages or because she has or may file a complaint with the Ministry of Labour.

How much notice must be given if employment is being terminated?

In most cases, if an employee has been employed for at least three months, written notice of termination of employment must be given. The minimum amount of notice relates to the length of employment, as follows:

Less than 2 years	1 week's notice
2-5 years	2 weeks'
5-10 years	4 weeks'
More than 10 years	8 weeks'.

After giving written notice, an employer can continue the employee's employment for the specified period. Or the employment can be terminated immediately with the employee being paid what she would normally have earned, without overtime, if she had worked through the required period of notice.

Separating employees are also entitled to receive all vacation pay owing them.

How much sick leave am I entitled to?

The law doesn't require an employer to grant an employee sick leave. It is a matter of individual company policy, or employer-employee negotiations, how much, if any, time an employee is allowed off work for illness.

The Unemployment Insurance Act provides up to 15 weeks of benefits for those who have had to stop working because of illness.

What about pregnancy leave?

If you have worked for an employer for at least one year and 11 weeks before the expected date of the baby's birth, you are entitled to a flexible, unpaid 17 week leave of absence. You cannot be fired for being pregnant if you have held your job for the required length of time.

How soon before birth can I begin pregnancy leave?

Any time within 11 weeks of the expected date of birth, as stated in a medical certificate. The employer can initiate the leave earlier than you intend to only if it can be shown that you cannot perform your normal duties adequately.

How soon after a birth should I return to work?

That depends on when you commenced your leave. If, for example, you began your leave 7 weeks before the birth of your child, you would have to return at the end of 10 weeks after the birth. If you began 3 weeks before, you may take 14 weeks after; one week before, 16 weeks after and so on. You must, however, for the sake of your own health take a minimum of six weeks of post-natal leave unless you obtain medical authorization to return to work sooner.

The Employment Standards Act ensures that the employee can return after her pregnancy leave either to the same job or to a position comparable in terms of work setting, responsibility and remuneration. If, however, a pregnancy leave of longer than 17 weeks has been arranged, the position on return is also open to renegotiation.

Can I get Unemployment Insurance during pregnancy leave?

To qualify for unemployment insurance benefits while taking pregnancy leave, you have to have 20 weeks of insured employment during the year preceding the baby's birth. Ten weeks of that time must fall between the 30th and the 50th week before your due date.

Unemployment Insurance benefits are paid by the federal government. Benefits pay two-thirds of your salary or \$147 per week, whichever is less. The maximum amount is adjusted annually.

Is the period when unemployment insurance benefits are available also flexible?

Yes. Since February 1976 a woman may apply for benefits as early as 10 weeks before birth or as late as the actual week of the birth.

How does the employee establish the right to benefits?

The employer must provide the employee with a document known as a "Record of Employment" which is necessary to establish the right to benefits. Once the employee has applied for benefits, there is a two-week waiting period before her payments begin. Therefore, it is important for the woman to apply for benefits as soon as she begins her leave.

What do I do if I become unemployed?

If you are covered by unemployment insurance, as most employees are, you should immediately contact your local office of the Unemployment Insurance Commission.

What can I do about unsafe working conditions?

Anyone who believes unsafe working conditions exist in an industrial establishment should contact the Industrial Safety Branch of the Ministry of Labour. This branch conducts regular inspections to ensure that Ontario workers work in safe conditions.

Can I be asked to lift heavy weights in my job?

There is no law that places a limit on the weight which a woman can be asked to lift. The Industrial Safety Act, however, states that no person, either male or female, can be required to lift, carry or move anything so heavy or in such a manner that is likely to endanger his or her safety or the safety of anyone else.

What rest areas must an employer provide?

If more than ten women are employed, the employer must provide a women's rest room or other place with reasonable privacy with one or more couches or cots and chairs. The exact number of toilets and washbasins required depends on the number of employees.

What happens in the event of on-the-job injury?

Employers are required to insure their employees—except for those working in a private residence—through the Workmen's Compensation Board against on-the-job injuries.

According to circumstances, injured workers may be paid medical expenses, compensation for income lost, or permanent pensions. Special medical and rehabilitation services may also be provided by the Board to help the injured worker return to useful work as soon as possible. The employer is initially responsible for promptly reporting all industrial injuries to the Board. If you are injured on the job, report it to your employer immediately.

More information about these matters can be obtained from the Workmen's Compensation Board, 2 Bloor St. East, Toronto.

Are there any special income tax considerations for a working woman?

A husband can claim \$1,830 exemption for a wife who earns less than \$361 in a year. If she earns more than that, the exemption is reduced by the difference between \$2,191 and the amount she earns. If she earns more than \$2,191 she cannot be claimed as a dependent by her husband.

Does a wife file her own income tax return?

If she earns more than \$2,191.

The figures cited will change annually in line with the rise in the cost of living. For example, on income earned in 1977, a husband will be able to claim an exemption of \$1,987 for a wife who earns no more than \$389. She will have to file her own tax return if she earns more than \$2,376.

Who should claim personal exemptions for children—my husband or I?

It is usually to the family's advantage for whichever person who has the higher income to claim the children as dependants. Similarly, it is usually better for this person to claim the aggregate charitable donations made by both the husband and wife during the year.

On the other hand the partner with the lower income may find that it is better to claim any allowable deductions for medical expenses. Such expenses for children may only be claimed by the person who claims the children as dependants.

If a wife earns less than \$2,191 and her employer makes income tax deductions, how does she get a refund?

By filing an income tax return.

Can a wife claim her husband as a dependant?

Yes, if she is the family's prime wage earner. The claim is exactly the same, and has the same limits, as a claim by a husband for his dependant wife.

What claims can an unmarried woman make for dependants?

She can claim the married exemption of \$1,830 if she is supporting a brother, child or other relative who is living with her. In addition, everyone filing a return is entitled to a personal exemption on her income of \$2,091, rising to \$2,271 in 1977.

Are child care costs a legitimate tax deduction?

If, in order to take a job, you must employ a housekeeper or baby sitter or have a child cared for in a nursery school or day care centre, the costs of such care are tax deductible—if the child is under 14 years of age at any time during the year or if the child is over 14 but suffering from a physical or mental infirmity.

Any such deductions—and lodging costs of up to \$30 a week at a boarding school or camp—may not exceed \$1,000 per child or \$4,000 for all children, whichever is less. Receipts must be kept and must show the social insurance number of the person who performed the child care services.

Does a family have to deduct income tax payments from the salary of any domestic help they hire?

If you employ domestic help, you may be required to deduct not only income taxes but also unemployment insurance premiums and Canada Pension Plan contributions.

You may be required to make employer contributions to unemployment insurance and the Canada Pension Plan as well. The deciding factor is whether the domestic help is self-employed or an employee. For information about this, contact the local office of Revenue Canada, Taxation.

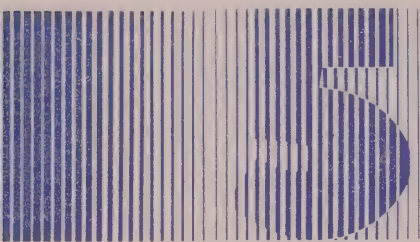
What child care facilities are available in the province?

There are public and licensed private nursery schools in Ontario.

Municipally-operated nurseries receive a subsidy of 50 per cent of their capital costs and 80 per cent of their net operating and renovation costs from the federal and provincial governments. Parents pay according to their financial ability.

A number of private nurseries have entered into agreements with their municipalities so that parents unable to pay the full fees of the nursery may get assistance. In such cases, the net expense to the municipality is also reimbursed at 80 per cent by the provincial and federal governments. The Day Nurseries Act provides an 80 per cent subsidy of operating costs for municipally-organized or -authorized "private home day-care". This refers to day-care for not more than five children provided under qualified supervision in private homes. Grants are available, too, to certain non-profit organizations and centres at universities and colleges.

There is growing demand for additional child care facilities in the province. Information about the establishment and operation of nurseries can be obtained by writing to the Day Nurseries Branch, Ministry of Community and Social Services, Queen's Park, Toronto.



How are my rights as a consumer protected?

Historically, the law concerning consumer transactions was "let the buyer beware." Today the Consumer Protection Act and the Business Practices Act protect your rights as a buyer. To avoid problems, you are well advised to read any agreement you intend to enter into very thoroughly and think the matter over carefully before you sign. The Business Practices Act forbids a wide variety of unfair means by which sellers can take advantage of consumers. For example, used goods cannot be held out as new, and business people cannot take advantage of a consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factors. If you feel that you have been treated unfairly in a consumer transaction, contact: The Registrar, Consumer Protection Bureau, Ontario Ministry of Consumer and Commercial Relations, 555 Yonge Street, Toronto, Ontario.

What information should be in a contract?

If you buy a product or service for more than \$50 and, at the time of entering into the contract, the goods are not delivered, the services are not performed, or full payment is not made, as a buyer you are entitled to have the following information in the contract:

- The name and address of the seller and buyer
- A full description of the goods and services purchased with the prices of each itemized
- A detailed statement about the terms of payment
- Where credit is extended, a statement of any security given
- A statement giving the amount of any insurance charges or official fees
- A statement about the amount left over after the deduction of the downpayment or trade-in
- A statement showing the interest rate both in dollars and cents and as an annual percentage
- A statement about the basis on which additional charges can be made if you fall behind in payments
- A warranty or guarantee. (If there is no guarantee, the contract must say so.)

If the contract does not contain all of this information, you are not bound by it.

What protection do I have against door-to-door salesmen?

The buyer has a "cooling off" period of two working days. Within that time you can notify the seller in writing—either by delivering the letter personally or sending it by registered mail—that you wish to cancel the contract. This ends the agreement.

If you do this, any goods received under the contract must be returned to the seller (at the seller's expense), and the seller must return any money or trade-in you have given.

What protection do I have if goods are defective?

The common law gives the buyer certain rights to recover damages or to have a refund for a defective item. It used to be a widespread practice to include in written sale agreements clauses which took these rights away from the buyer. The Consumer Protection Act makes clauses of this kind ineffective and you are free to ignore them even if they appear on a contract for consumer goods which you have signed. Since the refund you are entitled to may vary depending on the nature of the defect, you should consult a lawyer or your Better Business Bureau if you are faced with a problem of this kind.

What must a lender tell me about a loan?

Before giving you credit, the lender must tell you the amount you are going to receive in cash, the amount to be paid later, the cost of borrowing in both dollars and cents and in percentage form, the amount charged for insurance and official fees, and the extra charges that will be made if payments are not made on time.

If, after signing such a contract, you believe it is unduly harsh you should get legal advice. The matter can be taken to court under the Unconscionable Transaction Relief Act. If the court finds that, in relation to the risk, the cost of your loan is excessive, it can lower the cost of the loan or require the lender to return any excess payments to the borrower.

What information must be on my credit card statements?

You must get a monthly statement providing the following information: the balance at the beginning of the month, the balance outstanding at the end of the month, the amounts charged during the month, and the cost of borrowing. You must be given a copy of the statement which you can keep.

You do not have to pay any more than the sum shown outstanding. If you make your payment before the due date, no interest can be charged.

May a lender discriminate on the basis of sex in granting credit?

Equal Credit Opportunity Guidelines were introduced in Ontario during International Women's Year, requiring lenders to apply the same criteria to women as to men when determining their eligibility for credit. While these guidelines do not have the force of law, several hundred stores and credit granting agencies have agreed to abide by them.

What do the credit guidelines say?

They state that lenders should not refuse to extend credit to a woman because of a change in her marital status or require her to reapply for credit if she marries or becomes separated, divorced or widowed.

Credit is to be extended to any credit worthy woman in her own name if she requests it.

The same standards are to be applied when extending credit, including mortgage transactions, regardless of which spouse is the primary breadwinner.

An individual's credit rating should not be altered solely on the basis of the credit rating of the spouse.

Alimony and child support are to be considered as sources of income.

You have the right to ask the credit bureau to keep a file on you separate from that of your spouse.

However, the credit grantor has the right to consider your husband's income when extending you credit, provided the wife's income would be equally considered if a male applicant with a similar financial status applied for an equal amount of credit.

What should I do if I am denied credit for reasons contrary to the guidelines?

If you are denied credit and believe you have been discriminated against because of your sex or marital status, ask to see the senior credit officer of the agency involved. Be prepared to assert your claim and to back it with facts. If your request for credit is still refused and you are not given a satisfactory explanation, contact the women's advisor of the Ontario Ministry of Consumer and Commercial Relations, 555 Yonge Street, Toronto, Ontario.

What are my rights when a promissory note is sold to a third party?

A promissory note is frequently demanded by the seller in addition to the standard contract. It is a written promise to pay a specified sum.

The law requires that a promissory note given for consumer goods be stamped with the words "consumer purchase". If the note is properly stamped and sold to a third party such as a bank or a finance company, then the third party has the same rights and obligations as the original seller. If, for example, the goods are not delivered you cannot be made to pay for them.

If the note is not stamped "consumer purchase" it is not enforceable unless bought by an innocent third party who could not have known that it was given for consumer goods.

Am I responsible for unsolicited goods?

Not unless you ought to have realized that they were intended for someone else, or unless the goods were supplied to you as part of a contract you signed that provided for a periodic supply of goods without further solicitation. Otherwise, you are not responsible for the use, misuse, loss, damage or theft of unsolicited goods.

What about unsolicited credit cards?

You cannot be held responsible for unsolicited credit cards unless you sign for them or use them.

Can I go into bankruptcy?

If you have more debts than you can pay off, the last resort is personal bankruptcy.

In the past, bankruptcy proceedings were too expensive to be used by most individuals. Now, however, the federal government has established Public Trustees to help individuals get relief from their debts through relatively inexpensive bankruptcy proceedings. For detailed information, contact the Public Trustee nearest you.

What happens if I am taken to court for an unpaid debt?

If a creditor decides to take you to court, you will receive a summons or writ notifying you about it. You must reply to it in the specified way or else your creditor automatically wins the case and can garnishee your wages or sell your property.

How does garnishment work?

Your creditor gets a new garnishment order for each of your wage cheques to be garnisheed. The order can take up to 30 per cent of your wages.

Your employer cannot fire you because of these garnishment procedures. If he tries to, contact the Employment Standards Branch, Ministry of Labour, 6th Floor, 400 University Ave., Toronto.

How can I get rid of a garnishment?

You can go to the court which ordered the garnishment and ask the judge to remove it and substitute an order that you pay your debt by installments. As long as you pay the installments owing on time your creditor cannot garnish your wages.

How does a creditor obtain the right to sell my property?

The creditor gets a writ of execution which allows him or her to take your property, sell it, and apply the money received to the debt owing.

Your creditor can take any of your property with certain exceptions. He must leave you up to \$1,000 worth of clothing, \$2,000 worth of household furnishings and at least \$2,000 worth of tools used in your trade, but even

tools and household furnishings may be seized if they are the items for which your debt was incurred.

What powers does a collection agency have?

The powers are exactly the same as those of the creditor. The agency has the right to collect the money owing and to resort to court action if a debt is unpaid.

Very often, before a creditor will take a debtor to court, he or she will sell the debt to a collection agency. In the past some collection agencies have used unpleasant methods to try to collect debts—including false statements, collect calls and fake court documents. These means are now illegal.

Collection agencies cannot collect any more than the debtor owes, and any money collected must be applied to the debt.

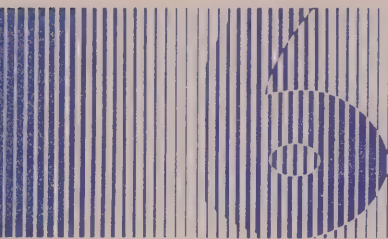
Can a seller repossess goods if the buyer fails to make payments?

If the contract stipulates that this can be done, the seller can repossess the goods and sell them. The seller must put the amount of money received for them into the debt account and then sue the buyer for the remaining money owed.

There are laws to protect the buyer, however. If the sale was for more than \$50, and the buyer has already paid two-thirds of the purchase price, the article cannot be repossessed. Even if the buyer has paid less than two-thirds, the seller cannot take the article by force. If the buyer refuses to give up the article, the seller must obtain a court order. The cost of the court order is added to the buyer's debt.

Once the seller has repossessed the article, it must be kept for 20 days, during which time the buyer can redeem it by paying the amount owing, any interest due on this amount and the actual cost of repossession. If the seller subsequently wished to resell the article and sue for the balance owing, the debtor must be notified of this intention at least five days before the sale.

In a conditional sales contract, the seller can only seize the good purchased, even if the contract states that other goods may be taken.



THE LAW AND SEX

What is the law regarding birth control?

Ontario government policy is that birth control information should be freely available through "appropriate channels". The Criminal Code has been amended so that it is no longer a criminal offense to give out information on birth control methods.

Are there any laws against sterilization?

No. It is left up to the individual doctor and the people involved to decide if it is appropriate in each particular case.

The policy of the Canadian Medical Association is that sterilization is acceptable when performed by a doctor in adequate facilities, and with the written consent of the person and by his or her spouse, whenever possible.

Sterilization operations are covered by OHIP.

Is it legal to have an abortion?

Abortion must be performed by an accredited hospital and has to be authorized by a majority of the members of a therapeutic abortion committee. The committee decides whether or not continuation of your pregnancy is likely to endanger your life or health.

An abortion performed under any other circumstances is, at this time, illegal under the Criminal Code of Canada.

A girl younger than 16 cannot have an abortion or any other operation without parental consent. If she is married, however, parental consent is not needed.

How do therapeutic abortion committees define "health"?

The definition will vary from committee to committee. Psychological factors such as anxiety and depression about the unwanted pregnancy are usually taken into account in addition to the applicant's physical health.

Who are on these committees?

The committee is appointed by the board of governors, the trustees or the directors of an accredited hospital which intends to perform abortions. About two-thirds of hospitals have such committees. Non-accredited hospitals may also appoint committees if the Ontario Minister of Health believes they have the necessary staff and facilities to carry out such operations.

At least three of the people sitting on a therapeutic abortion committee must be qualified medical doctors.

Who will perform the abortion?

If the committee approves an abortion, it is performed by a qualified medical doctor who is not a member of any therapeutic abortion committee.

OHIP will cover the cost of a legal abortion.

Are there any legal problems with artificial insemination?

Not if the semen used is that of your husband.

Difficulties might arise, however, if a child is conceived using semen from another man. Under the law, that child could be considered illegitimate, even if your husband gave his consent to the artificial insemination.

To prevent this happening, it is best to adopt the child. This will prevent future challenges to his or her legitimacy.

Could artificial insemination be regarded as adultery?

The law is not absolutely clear about this at the moment. Recent cases suggest, however, that artificial insemination is not adultery—even if it is done without your husband's consent.

What constitutes rape?

A man commits rape when he has sexual intercourse with a woman who is not his wife without her free consent. This means that a woman cannot lay a rape charge against her husband, whether they are separated or not. A husband may be charged, however, if he assists another man to rape his wife.

What should I do if I am raped?

Unpleasant as it may be, in order to credit your story you should take the following actions:

- Tell your friends and family about it immediately
- Contact the police as soon as possible
- Do not wash
- Do not change your clothes
- See a doctor as soon as possible.

There are a lot of stories about the problems a woman has to go through if she wants to lay a charge of rape against a man. Is it worth it?

Yes. Most emphatically so.

It is important that no man believes he can commit rape without being punished. It is important, too, that a rapist be prevented from attacking any other women. Some protection is given to the woman by the power of the judge to make an order, upon application by the prosecutor, that the identity of the woman and her evidence not be published or broadcast.

What problems does a woman face if she lays a charge of rape?

In a prosecution for rape, the accused man may claim that the woman had consented. She can then be asked whether she has previously had sexual intercourse with the accused and evidence of such intercourse can be introduced if she denies it.

A woman may no longer be asked if she has slept with other men, unless notice has been given to the prosecutor and the judge decides — after a hearing in the absence of the jury and the public — that such questions are necessary.

Finally, in cases where the only evidence against the accused is the testimony of the woman, the Criminal Code requires the trial judge to tell the jury that it is dangerous to find the accused guilty in the absence of supporting evidence. The jury may still do so if they are satisfied beyond a reasonable doubt that the woman's story is true.

Why are rape victims put through such an ordeal?

One reason is because the maximum penalty for rape is stiff. A rapist can be sentenced to up to life imprisonment.

Don't a lot of people feel that a woman is at least partly at fault if she is raped?

Perhaps some people do, but if they do they are being unfair. The law certainly does not hold this to be true.

Rape is no more the woman's fault than, say, assault on a man is the injured man's fault. The woman herself should never feel guilty or degraded because a man has committed a crime against her by sexually assaulting and raping her. She is an innocent victim.

What if a man assaults a woman sexually without forcing her to have intercourse?

In such cases—for instance, where a man forcibly touches a woman's breasts—he can be tried for indecent assault. If convicted, he can be sentenced to up to five years in jail.

Can a man lay a charge of rape?

No. The law does not protect a man against rape by a woman—if indeed such an act is possible.

A man can, however, lay a charge of indecent assault against another man. No such charge can be made by a man against a woman.

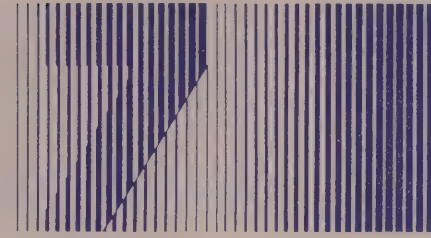
Can a woman bring a charge of rape against another woman?

A woman who sexually attacks another woman cannot be charged with rape, but the victim can charge her with indecent assault in the same way as she can lay such a charge against a man. However, a woman may be charged with rape if she assists a man to rape another woman.

What else should I know about rape?

The foregoing information is far from complete.

Women should know, however, that many cities and towns in Ontario have rape crisis centres where they can go for assistance and advice about this matter.



MARRIAGE

Isn't marriage the concern only of the two people involved?

No. It may seem to you that this perhaps should be the case but as with many relationships, the state takes an interest in regulating marriages to protect society.

Can I sue for breach of a promise of marriage?

Yes. When you become engaged to be married, the law sees the engagement as a contract. If the promise is broken by one person, the other can sue for damages—for instance, loss of social position, loss of opportunity for support and maintenance, injury to feelings or special damages affecting property. Marriage cannot be forced upon another person, however.

Breach of promise law originated at a time when women were largely dependent on their husbands for support and social position. Most people now agree that this law has lost its usefulness in recent years. The Ontario Law Reform Commission has recommended that it be abolished.

What happens to engagement and wedding gifts if a marriage is called off?

Engagement gifts, including the engagement ring, and wedding gifts are considered conditional on marriage. If the marriage is called off by mutual consent, the two people must return all such gifts they gave each other. If, however, the marriage is called off by one person, without justification, that person loses the right to demand the return of any gifts. If the wedding does not take place, all engagement and wedding gifts from other people should be returned to them. If, however, after marriage there is a divorce, the gifts given by friends and family of the wife are kept by her, and the husband keeps the gifts of his friends and family.

Does legal authorization have to be obtained to get married?

Yes. A marriage in Ontario must be authorized by a provincial marriage licence, public banns or a special permit from the provincial secretary.

How do I obtain a marriage licence?

You can get this from the clerk or deputy clerk of a municipality, or from a magistrate in areas without a municipal organization, or from an appointed member of an Indian tribe or band. The usual fee is \$15. This is waived for Reserve or Crown Land Indians.

The intended bride and groom should apply for the licence together. If one is unable to go, the other can apply alone as long as he or she has the other person's birth certificate. To get an Ontario marriage licence, at least one of the two people to be married must live in the province.

The licence is valid for three months. The couple must wait at least three days after the licence is issued before they can marry.

What about public banns?

If you prefer this to getting a licence, you should approach a member of the clergy at the church or synagogue of your choice. If you have previously been married and obtained a divorce or annulment, the option of public banns is not available to you.

Once the banns have been published, and before the ceremony, your member of the clergy will give you a form confirming their publication. You may marry five days after the final banns are published.

Is there any difference between a religious and a civil ceremony?

In the eyes of the law both have equal validity.

Religious ceremonies are usually performed in a place of worship, but

they can take place anywhere you and your clergyman choose. Civil ceremonies are performed by a judge or magistrate. They must take place in the judge's chambers or the magistrate's office between 9 am and 5 pm.

Whom am I not allowed to marry?

You cannot marry anyone who is closely related to you either by blood or marriage. For instance, a woman cannot marry her uncle, step-father, nephew, brother, son, husband's father or niece's husband.

A marriage is also unlawful if either of the partners is already married. If such a marriage takes place it is invalid. The person who goes through a marriage ceremony when he or she is already married has committed the crime of bigamy which is punishable by up to five years' imprisonment.

How old do I have to be to marry in Ontario?

If you are over 18 years of age, no consent is needed in most cases.

If you are under 18, you normally need the written consent of your father. If he is dead or not contributing to your support, then your mother or an appointed guardian can give permission.

A person under 18 can get married without consent, however, if it can be shown that both parents are dead and no guardian has been appointed, or the person who must give consent is mentally ill, not living in Ontario or cannot be found.

A judge has the power to remove the consent requirement if it is being withheld unreasonably or if it is unclear who should properly give consent. If a person is under 14 years of age, she can be married only if she has the necessary consent and a doctor certifies that marriage is necessary to prevent an illegitimate birth.

The minimum age requirements of marriage law are under review. The Ontario Law Reform Commission advocates a minimum age of 18 for men and 16 for women, with a woman needing the consent of both parents until she reaches 18 years of age. The Royal Commission on the Status of Women supports a minimum age of 18 for both sexes.

What if I am divorced and want to marry again?

A divorced person must obtain a marriage licence. If the divorce took place in Canada, you must submit a copy of the final divorce decree when applying for the licence. If the divorce or annulment was granted outside Canada, written authorization of the new marriage must first be obtained from the Registrar's Office of the Ontario Ministry of Consumer and Commercial Relations.

When can I presume that my spouse is dead?

If your spouse has been missing for seven years, and reasonable inquiry gives you no reason to believe he is living, you may apply to a County Court judge for an order of Presumption of Death. This allows you to remarry. The order must be shown to obtain a marriage licence or have banns published.

If your spouse later returns, your second marriage becomes invalid. Criminal bigamy has not been committed in such a case, and your children by the second marriage are considered legitimate, but nevertheless your first marriage will be the only one considered valid under the law.

For this reason, if there is no religious objection, it is advisable to apply for a divorce on the grounds of disappearance for three years rather than for a Presumption of Death order.

Is my marriage invalid if it does not meet all the legal requirements?

Not necessarily. If your marriage was performed by an unauthorized

person, or if you failed to meet the requirements about banns or a licence, but you were acting in good faith, intended to comply with the law and have lived together with your spouse after the ceremony, your marriage is valid.

Do I have to take my husband's surname when I marry?

No. The change of surname is merely custom, not law. If you began marriage by adopting your husband's surname, you can unofficially return to using your maiden name.

Any passport you hold in your maiden name does not become invalid when you marry. Questions you have about this should be directed to the Passport Office.

If, on marriage, you keep your maiden name, your children will usually be registered on their birth certificates in your husband's name or you and your husband may, if you wish, give your children both your surnames joined by a hyphen, provided that the father's name comes first.

If you are not married, your child takes your surname unless both you and the father wish to name the father when registering the birth. If the child's father is named on the birth registration form, then the child must be given the father's last name, or a hyphenated surname with the father's name first. For the father's name to be shown, the father must first formally declare his paternity.

Can I change my name if I want to?

Yes, you can assume and use any name you want, unless you are doing it for an improper purpose.

A formal change of name may be made by application to a judge under the Change of Name Act. A married person, however, is deemed to bring the application on behalf of his or her spouse and their dependent children as well, unless the spouse has been living apart for five years before the application. Married men or women living with their spouses cannot formally change only their own individual names.

The advantage of a formal over an informal name change is that it can force anyone who refuses to recognize your informal change of name to do so. A formal name change also gives you the right to change the name on your birth certificate.

What about changing my children's names?

An unmarried mother can change the names of her children as she wishes. An unmarried mother who marries, or a widow who remarries, may change her children's surnames to that of her new husband with his consent.

Similarly, if your marriage has been dissolved, you can change the surnames of any children in your custody with the consent of your new husband. The consent of the children's father is also necessary, unless he does not contribute to the support of the children, is incapable of such consent, cannot be found or, for any reason, is a person whose consent ought to be dispensed with.

Is a marriage contract a good idea?

Some couples find it useful to have a contract stipulating the division of property and household duties during a marriage.

However, a marriage contract cannot include reference to the possibility of a future separation. Nor can it expressly grant the right to either the husband or wife to engage in extra-marital sexual relations. If it does either of these things, the courts will most likely find it unenforceable, because it would be seen as encouraging marriage breakdown or sexual immorality, both of which are contrary to public policy.

Any provisions of a marriage contract in which the wife agrees to give up

her legal right to support or custody of the children may be reassessed—and perhaps overruled—by a court.

Because of these problems it is a good idea to see a lawyer if you want a marriage contract.

Are married couples treated differently than single people under the Criminal Code?

Yes, the Code gives them special status. A charge of rape, for example, cannot be laid by a wife against her husband.

A husband or wife cannot be found guilty of theft of the other's property unless this property is taken with the intention of desertion or while the couple is living apart.

Under the Canada Evidence Act, the wife or husband of an accused person cannot testify for the prosecution, except in the case of certain sexual, marital, or parental offenses, or where the crime charged threatened the health and comfort of the spouse whose testimony is sought.

A spouse may volunteer to testify for the defense in all cases, but cannot be compelled to do so against his or her will. If a wife or a husband chooses to act as a defense witness, he or she has the privilege of refusing to disclose any communication between the couple.

No married person whose spouse has committed an offense can be charged as an accessory after the fact merely because he or she harboured the spouse or assisted in an escape. A married woman also does not commit an offense if she assists her husband's accomplices for the purpose of helping the husband or the accomplices to escape. A husband who helps his wife's accomplices, however, is guilty of an offense.

In cases of family and marriage law, how does a court decide which jurisdiction's laws apply?

The court first determines the domicile of the people involved. When we are born we automatically assume the domicile of our parents. This domicile changes if we move somewhere else and intend to stay there indefinitely or permanently. It changes, too, for a woman, when she gets married. She is then deemed to have the same domicile as her husband even if they are not actually living together.

This can lead to problems and a lawyer should be consulted. Generally, it means that in family and marriage matters, the law where her husband lives usually applies. A woman who seeks the annulment of a voidable marriage must apply to the courts in the province where her husband is domiciled. In case of divorce or the annulment of a void marriage, however, a woman's domicile is determined as if she were a single adult. She can apply for a divorce where she lives.

Are common-law marriages recognized in Ontario?

No, they are not recognized as legal marriages and do not have the same status under the law. The length of the common-law relationship or the birth of children does not change this.

What happens if one of the partners dies?

There are no rights to dower or curtesy. If one partner dies without leaving a will, the other is entitled to nothing. The illegitimate child of a man who dies without a will cannot inherit any part of his estate. The child can, however, inherit from the mother if she has had no legitimate children.

Can a common-law wife have the same right as a legal wife to pledge her husband's credit?

No. She has no implied right to pledge her husband's credit.

What about property owned by a common-law husband and wife?

Even when property is put in the wife's name, if the husband pays for it the law assumes it is his and that she is merely holding it in trust for him. If the couple want to own property jointly, they must arrange for a joint tenancy agreement to be completed. If the man is legally married, his legal wife will ordinarily have a dower interest in his share of the property. Common-law spouses who are concerned about this should see a lawyer.

What about the children of a common-law marriage?

They are illegitimate, and subject to all the disadvantages of illegitimacy.

People living in a common-law relationship usually are not able to adopt children. Adoptive parents must be legally married or the Children's Aid Society will not view their relationship as a permanent one.

Of what other laws is a common-law spouse unable to take advantage?

The Courts interpret the words "husband and wife" in legislation to mean "legally married husband and wife".

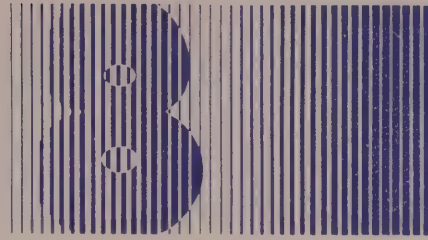
Because of this, a common-law spouse can't take advantage of the Deserted Wives Act, the Children's Maintenance Act, the Dependant's Relief Act or the Devolution of Estates Act, or of any other statute giving one spouse rights against another.

What laws will still benefit a common-law spouse?

Some Acts specifically grant the common-law spouse legal rights. Two are the Succession Duty Act and the Gift Tax Act, where the couple lived together for a period of years before the death, and behaved in public as if they were husband and wife.

The Workmen's Compensation Act will give benefits to the common-law wife of a dead workman depending on the length of the relationship, provided that there is no legal widow who was dependent on the man at the time of his death. If there are no children, the relationship must have been of at least six years' duration. If the couple have a child, then the relationship need not have existed for more than two years.

The War Veterans Allowance Act, the Criminal Injuries Compensation Board and the Canada Pension Plan Act also treat a common-law relationship "of some permanence" as a legal marriage. Here, also, the



COMMON LAW RELATION- SHIPS

COMMON LAW RELATION- SHIPS

legal spouse may take precedence.

Agencies responsible for administering public housing, welfare and the Ontario Health Insurance Plan do not distinguish between legal and informal family units. OHIP may require a form to be completed stating that the couple are known as man and wife in their community. Under the Criminal Code a husband is obliged to provide necessities of life for his wife and a common-law wife may sometimes be extended this protection.

Can a person leave all or part of an estate to a common-law spouse?

Yes, of course. This should be done by means of a will. In the will, reference should be made to the spouse by his or her name, and not just to "my wife" or "my husband".

**Does a man have the duty to support his wife?**

Yes. By law, he must support her while the marriage lasts.

Do I have to support my husband?

No. You cannot be forced to support him, even if you are the only or the main wage earner in the family. This situation is likely to change in the future. The Royal Commission on the Status of Women and both the Canada and Ontario Law Reform Commissions have all recommended that wives and husbands should have the same duty during marriage to provide support for the family. This is already the case following divorce. You can both be prosecuted under the Criminal Code if you fail to provide the necessities of life to your spouse or child, endangering their lives or health, or when they are destitute.

Can I use my husband's credit whenever I want?

When a husband and wife are living together it is presumed that the wife can pledge her husband's credit for any goods or services which are necessary to maintain their standard of living.

Creditors don't require your husband's signature to enforce their claims for payment when credit has been extended to you. It should be noted, however, that no tradesperson is under any obligation to extend credit to anyone.

Can my husband stop me from using his credit?

If a husband wants to withdraw his wife's credit privileges he should send a notice to all tradespeople she deals with telling them not to supply goods or services to his wife on credit. An advertisement in the newspaper is not sufficient notice.

If a husband takes such an action he must be prepared to prove that his wife already has enough goods and access to enough services to maintain their standard of living.

Can I be held responsible for my husband's debts?

Not unless he entered into the contract on your behalf and with your express consent.

Am I entitled to support if I am deserted?

Yes. The Deserted Wives and Children's Maintenance Act provides a simple, inexpensive way for deserted wives and children to obtain a family court order requiring the husband to make support payments.

When is a woman considered deserted?

The most common situation is where the husband leaves the wife and the matrimonial home. However, if a husband behaves in such a manner as to drive his wife out of the home the courts may find that he has deserted her and that her conduct is legally justified, even though she is the person who actually leaves.

The Deserted Wives and Children's Maintenance Act says that such legal justification for the wife living apart from her husband includes acts of cruelty by the husband, or his refusal or neglect, to supply her with food or other necessities when able to do so, or proven adultery which the wife has not condoned. A woman is well advised to consult a lawyer before leaving the husband for whatever reason.

Where a husband who is able to do so has neglected or refused to make adequate provision for the maintenance of his wife she may under some conditions be treated as a deserted wife even though they continue to

reside under the same roof. The question to be determined in each case is whether the spouses are leading separate lives notwithstanding the fact they are living in the same home.

Can a deserted wife use her husband's credit?

Yes, if she does not have enough money to buy goods or services needed to maintain her standard of living and her children's. She cannot use his credit, however, if she has committed adultery. The wife can "bargain away" her right to use her husband's credit for an allowance in a separation agreement. If the husband does not live up to the terms of the separation agreement, however, she again has the right to use his credit.

Does a deserted wife have the right to continue living in the matrimonial home?

If a wife is sole or joint owner of the home she has an owner's right to occupy it, whether or not she is living with her husband. If the husband deserts his wife she has the right to continue living there even if he is the sole owner of the home. This right ceases with divorce, annulment, adultery or desertion by the wife, or if the husband sells the home. A wife who has a dower interest in the home can effectively prevent the husband from selling the home by refusing to bar her dower. (See the discussion of dower on page 45.) A wife who does not have this protection can sometimes get a court order to prevent the sale if she learns of it before it is completed.

Is support available where there has been no desertion?

A wife whose marriage has broken down for reasons other than desertion may be able to apply to the Supreme Court of Ontario for alimony during the period in which she remains legally married, or for maintenance for the time after the marriage is dissolved. Such an application is more expensive and complicated than one under The Deserted Wives and Children's Maintenance Act.

When can I apply for alimony?

The term *alimony* is mistakenly used in everyday language to refer to maintenance payments after a divorce. In fact, the term refers only to support payments made before the dissolution of a marriage.

A woman who is unwilling or unable to apply for divorce or annulment may make an independent application for alimony in the Supreme Court of Ontario. Only a wife may apply for alimony of this kind.

The term *alimony* is also used to refer to interim payments ordered by the Ontario Supreme Court while an action for annulment or divorce is pending. Where an annulment application has been made only the wife is eligible for interim alimony, but in the case of divorce the husband is also eligible.

When will alimony be granted?

A wife living apart from her husband who applies for alimony without seeking divorce or annulment may be granted alimony if her husband has committed adultery, is guilty of cruelty, or has deserted her for more than two years. It will be granted, too, in instances where the desertion has been for less than two years and the wife sincerely wishes the husband to return to her.

Independent alimony will not be granted, however, in cases where the wife has committed adultery (unless this was done with her husband's approval, or he subsequently forgave her) or in cases where the wife has treated her husband cruelly.

A wife who applies for alimony without applying for divorce or

annulment can get a court order for interim alimony. This will be for an amount sufficient to maintain herself “in modesty and retirement” until the alimony trial. This award is not made at a trial. Therefore the facts are not dealt with; only her need.

A similar rule applies with regard to an application for interim alimony pending a divorce or annulment trial, since the court will look primarily at the needs of the husband and the wife, leaving the question of whether there are grounds for divorce or annulment until the trial of the application.

How much alimony do I receive?

Your actual income is taken into consideration. Your ability to earn income may also be considered. As the courts begin more often to treat women as employable individuals rather than as helpless females, it is probable that they will require more and more alimony-seeking wives to contribute to their own support.

Because alimony is based on need, and, when an order for alimony is made in the absence of an annulment or divorce action, on the behaviour of the people involved, it can be increased, reduced or suspended by the court whenever it believes the situation has changed.

Do the same support payments continue when a marriage is terminated?

No. Neither support payments under the Deserted Wives and Children’s Maintenance Act nor alimony payments continue after a marriage is terminated by annulment or divorce. You must apply for a maintenance order again at the time the application for divorce or annulment is made.

What about support following divorce or annulment?

Only a wife can apply for maintenance in an action for annulment. This can be withheld if you have committed adultery, or can be subsequently ended if you do not remain chaste after the annulment.

Support can be ordered for either the wife or husband under the Divorce Act. Adultery or other misconduct is considered in such circumstances but does not necessarily mean that support will be denied.

How do the courts enforce decisions granting support?

Their decisions can be enforced by garnisheeing the husband’s wages, or seizing and selling his property under the court’s supervision.

Under the Deserted Wives and Children’s Maintenance Act a husband who fails to make payments may also be summoned to the court to explain the default. If he does not satisfy the court that his failure is due to inability to pay, the judge may order him imprisoned for up to three months unless he pays the amounts ordered.

What can I do if my husband plans to leave Ontario to avoid his obligations to me?

If he does, in fact, leave Ontario, the courts of all other Canadian provinces and of some foreign countries or U.S. states can and will enforce the maintenance order.

Where the support application is made under the Deserted Wives and Children’s Maintenance Act, the justice of the peace before whom it is made may issue a warrant for the arrest of a husband or father who is going to leave Ontario, or even the specific part of Ontario over which the Family Court has jurisdiction.

What about support following the death of my husband?

Under the Dependents’ Relief Act, if a deceased husband has not provided support for his family in his will, the court can order adequate support to

be paid out of the estate, if an application is made within three months of the death (see the section on Property.)

A wife who is living apart from her husband at the time of his death under circumstances that would make it impossible for her to obtain alimony (such as desertion, uncondoned adultery, or cruelty by the wife) is not eligible for assistance under the Dependents' Relief Act. (The Act does not, however, forbid the granting of relief to a widower who has been guilty of similar conduct.)

Can the amount of support be decided in an out-of-court separation agreement?

A provision of a separation agreement that requires one spouse to pay support to the other can be enforced through the courts. Adultery or remarriage by the wife will not terminate a husband's support obligations under a separation agreement, unless there is a clause in the agreement which expressly says so.

Generally speaking, clauses in a separation agreement which forbid a wife to apply to the courts for alimony or support upon the dissolution of a marriage are ineffective, since they will be disregarded by the judge on the grounds that public policy does not permit a husband to contract out of his obligations to meet his wife's financial needs.

An exception to this rule exists, however, with regard to the Deserted Wives and Children's Maintenance Act. It is not possible to bring an application for maintenance under the Act where a separation agreement exists and the husband makes the agreed payments, even if they are so inadequate that she has to go on welfare. She will be able to get additional support only by applying for alimony or annulment or divorce in the Supreme Court of Ontario, which is much more expensive and complicated than seeking maintenance before the Family Court.

A wife may also lose her right to assistance under the Dependents' Relief Act if she accepts in the separation agreement a lump sum as a complete discharge of her husband's obligation under this Act. A separation agreement that provides for payments on a weekly, monthly, or yearly basis, or that does not provide for any support at all will not have this effect.

What duty do parents have to support their children?

Parents are required to maintain their children until they are 16 years old, or 18 years if the children are attending an educational institution. This duty applies equally to both the father and the mother.

What about the support of my children in the event of desertion?

You may apply to the court for an order that the children's father pay support. This is done under the Deserted Wives and Children's Maintenance Act. A father cannot bring an application under this Act to have the mother pay support if she deserts the children. Adultery by the mother does not affect the right of the children to support.

Must a father support his children when he and his wife are living apart but there is no desertion?

Under the Infants Act, the Supreme Court of Ontario or the Surrogate Court (a branch of the County Court) can order the father (but not the mother) to make support payments for his children. An application to these courts is more complicated than one to the family court under the Deserted Wives and Children's Maintenance Act.

What about child maintenance payments following a divorce or annulment?

An application can be made by either you or your ex-husband for child

maintenance payments from the other.

What is the penalty for failing to support children?

If the parents fail to provide their children with the necessities of life, they can be prosecuted under the Criminal Code or under the Children's Maintenance Act. If convicted, they can be imprisoned for up to two years.

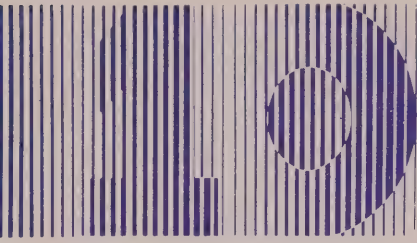
The Child Welfare Act also permits the imposition of a fine of up to \$500, or imprisonment for not more than one year of a person having custody of a child who fails to support it.

Are there any circumstances in which children are obliged to support their parents?

Yes. If parents are unable to support themselves because of age, illness or infirmity, a judge may order one or more of their adult children to pay up to \$20 a week towards their support.

The fact that a daughter is married does not disqualify her from having to make such support payments. In such cases, the income and financial position of both her and her husband are taken into consideration.

In deciding the amount of any such support payments, a judge will consider the parents' needs, the children's duty to aid their parents, and the children's own financial situations. The support payments can be changed to reflect any changes in these circumstances at a later date.



DISSOLUTION OF MARRIAGE

DISSOLUTION OF MARRIAGE

When can a marriage be annulled?

There are two circumstances under which a marriage can be ended by annulment rather than divorce.

First, if the marriage was "void", that is, never really a marriage. This is the case if one of the people was already married or if the couple has failed to comply with any of the basic legal conditions for marriage. (For example, they are too closely related.)

Second, are marriages which the law regards as "voidable". In such marriages one of the parties may change his or her mind after the ceremony is performed for certain specific reasons(see below.)

If a marriage is regarded under law as never having taken place, is it necessary to have it formally annulled?

Strictly speaking, no. It is usually advisable, however, to have such a "marriage" officially declared void by a court. This clarifies any questions about property rights, creditors or heirs.

Who can apply for an annulment?

In the case of a voidable marriage, this can be done only by one of the two people directly involved. In the case of a void marriage it can also be done by one interested person.

What reasons are acceptable for voiding a legal marriage?

Normally, a mistake about a person's character, financial situation or other circumstances is not sufficient grounds for annulment.

Acceptable reasons include the following:

- Physical inability to have intercourse (this does not include sterility or frigidity)
- Insanity or mental incompetence at the time of the marriage
- A mistake about the identity of the person married
- If the man was under the age of 14 or the woman under the age of 12 at the time of the ceremony
- Where one of the partners did not consent to the marriage freely.

Where can I apply for an annulment?

If you want to annul a void marriage, you can petition for annulment in the province where you live and intend to live, no matter where your "husband" may be.

If you seek annulment of a voidable marriage, however, you are regarded as having the same domicile as your husband, and must institute proceedings in the province where your husband lives.

Are separation agreements private contracts?

Yes. The interests and rights of both you and your husband are protected by a mutual separation agreement drawn up and signed by both of you. If legal advice is sought, you should each consult a different lawyer.

Can a separation agreement be changed?

As a general rule, such agreements—however unfair they may be—are legally binding and cannot be changed except by mutual consent. This rule, however, does not apply to agreements containing an express provision which says that the terms are subject to change if the parties engage in improper conduct, or if their economic or other circumstances change.

Clauses in a separation agreement which purport to restrict a wife's right to apply to the courts for alimony or maintenance are void because they are contrary to public policy.

The courts may also change the custody provisions of a separation agreement where the change is in the best interest of the children.

Does a separation agreement give me the right to remarry?

No matter how the agreement is worded, it cannot legally allow either person to remarry.

What are the residence requirements for divorce?

The person applying for the divorce must be living in Canada at the time of the divorce petition and must intend to continue living here.

The wife's domicile is determined as if she were single. She can petition for divorce in the province where she lives no matter where her husband may be.

For an Ontario court to grant a divorce, one of the people must have actually lived in the province for at least 10 months of the year preceding the divorce petition.

What are the grounds for divorce in Ontario?

At the moment, they include the following:

- If the other person has committed adultery (it is irrelevant that the parties may be living apart already at the time of the adultery.)
- If he or she is guilty of sodomy, bestiality or rape or has engaged in a homosexual act
- If he or she has gone through a marriage ceremony with someone else
- If he or she is guilty of physical or mental cruelty which makes living together intolerable
- If the court agrees that there has been a permanent breakdown in the marriage due to imprisonment, alcohol or drug addiction, disappearance, non-consummation of the marriage, separation or desertion.

Under what circumstance is imprisonment regarded as sufficient grounds?

If the other person has been imprisoned for three of the five years immediately preceding the petition, this can be sufficient grounds. It can be sufficient, too, if the person has been imprisoned for at least two years immediately prior to the petition, if the imprisonment is part of a sentence to death or to a term of at least ten years, and all rights of appeal against the sentence have been exhausted.

When is alcoholism or drug addiction sufficient grounds?

If the other person has been grossly addicted for at least three years immediately preceding the petition, and there is no expectation of rehabilitation within a reasonable length of time.

What about disappearance?

This can be sufficient grounds if the person petitioning has had no knowledge of his or her spouse's whereabouts for at least three years immediately preceding the petition, and throughout that time has been unable to locate the spouse.

What about non-consummation of the marriage?

This is sufficient grounds for divorce if the marriage is not consummated for at least one year, either because the other person has refused to consummate it or because he or she is too ill or disabled to consummate it.

What are the differences between annulment of a marriage for non-consummation and divorce for the same reason?

Annulment may be preferable where the person seeking to end the marriage is the person who is incapable of bringing about consummation.

The Divorce Act does not permit the person suffering from the incapacity to apply for a divorce for this reason, but either party may apply for an annulment. Also, a person seeking an annulment may apply immediately but a divorce on this ground cannot be sought unless the situation has continued for a year after the marriage.

Both refusal and inability to consummate the marriage may be grounds for divorce but only inability (and not refusal) is a reason for annulment. A woman may be entitled to different property rights depending on whether she obtains an annulment or a divorce. A woman who obtains an annulment will be treated, for the purpose of determining property rights, as though she were never married, whereas a divorced woman will be able to benefit from certain provisions of the law, or under any provisions of wills that make bequests conditional upon marriage.

How long a period of separation constitutes grounds for divorce?

If the person applying for the divorce caused the separation by deserting his or her spouse, the applicant must wait five years before he or she can succeed in obtaining a divorce on the grounds of separation.

When the person who was deserted is bringing the application or where desertion was not the cause of the separation, the waiting period for a divorce is three years.

Are there any exceptions to these rules?

Yes. Even if one or more of the foregoing reasons for divorce exists, the court may still refuse to grant a divorce if any "bars to divorce" exist.

What are these "bars to divorce"?

There are three basic bars to divorce:

One is condonation. This is where any marital offenses are forgiven and the couple is reconciled. If, for example, a wife commits adultery and her husband knows about it but subsequently lives with her as her husband for more than 90 days, then it will be assumed that he has condoned the offense and he cannot use her adultery as evidence in order to obtain a divorce.

A second is connivance. If the person petitioning for the divorce has consented willingly to the spouse's behaviour which is being put forward as the ground for divorce, this is regarded as connivance.

The third is collusion. This is any arrangement by the couple to deceive the court—for instance, by suppressing information or by purposely providing inaccurate evidence.

Even where condonation or connivance have taken place, the courts will sometimes grant the divorce if they find that it would best serve the public interest. Collusion is always a bar to divorce, however.

Under what circumstances will a court refuse a divorce?

There are three basic circumstances.

A divorce will not be granted if it involves irresponsible desertion. That is, if in the opinion of the court the divorce would be unduly harsh or unjust to one of the partners or would hinder making reasonable arrangements for the support of the children or of a partner who will need such support, it will not be granted.

The second is insufficient grounds. Whether or not the grounds for divorce are sufficient is decided by the court, not by the couple involved. In making this decision, the court must decide, for instance, whether the alleged addiction is "gross" and "irremediable", or whether the evidence about an alleged marital offense is sufficient to establish that it really did occur.

The third circumstance in which a court will not grant a divorce is if a reconciliation seems possible. If the reconciliation fails, the action for

divorce may be resumed or begun again.

Does the law actively encourage reconciliations?

Yes. Under the Divorce Act, a legal advisor must draw a client's attention to marriage counselling services and discuss the possibility of reconciliation. Unless the circumstances make it inappropriate, the court must also question the couple about the possibility of reconciliation. If at any point in the divorce proceedings a reconciliation appears possible, the court can adjourn and, with the consent of the couple, appoint a marriage counsellor to help the couple preserve their marriage. In such cases, either party may ask the court to resume the proceedings after an adjournment of 14 days.

When does a divorce become final?

The initial court order granting a divorce is called a *decree nisi*. Usually there is a three month period between this and the final *decree absolute*. Until this final decree, the couple is still married.

Why does this waiting period exist?

It allows time for a person to appeal the decision or to bring forward new evidence (such as reconciliation or collusion) which might affect the decision.

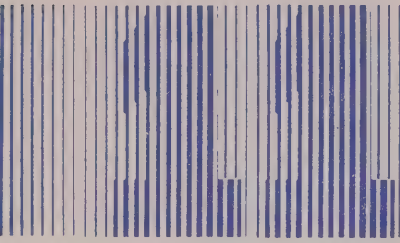
In addition, the court may use this time to decide such questions as custody of the children or the amount of maintenance payments.

When may a divorced person remarry?

He or she may marry again any time after the decree has been made absolute.

Does a person need a lawyer for a divorce or can it be handled on a do-it-yourself basis?

It is advisable to have the assistance of a lawyer. Do-it-yourself divorce kits should be viewed with caution because of the complexity of the laws about divorce. If you can't afford a lawyer, you can apply for legal aid.



CHILDREN

CHILDREN

Which agencies protect children from abuse in Ontario?

Children are protected under the Child Welfare Act, which is administered by 51 Children's Aid Societies throughout Ontario as well as by separate sectarian societies in Toronto, Hamilton and Windsor. They investigate allegations that children may be in need of protection. They provide protection for children when necessary. They care for children who are assigned to them. They place children for adoption. And they counsel and assist families or unmarried parents for the protection of children or the prevention of circumstances requiring children to be protected.

What happens if a child needs protection?

The Children's Aid Society or a police officer may take the child to a place of safety. The child must then be brought before a judge of the Provincial Court, Family Division, within five days. Or they can apply to a judge for an order requiring the person with custody of a child to appear with the child before the judge.

If the child is in need of protection because the child has been temporarily left alone without proper care or supervision, the Children's Aid Society may arrange for a homemaker to care for the child in the home instead of removing the child.

What happens if a judge finds the child has been neglected?

If the child has been found in need of protection, the judge may make one of three orders:

- The child may be returned to his or her parents or guardians under the supervision of the Children's Aid Society.
- The child may be temporarily committed to the Society's care. In the latter case, the children become known as Society wards. The family may receive counselling from the Society before the child is returned. A child cannot be a Society ward for longer than two years.
- The child may in some cases be made a Crown ward.

Can a wardship order be appealed?

Yes. An appeal can be made to a county court judge within 30 days of the original decision, but if the parent or the Children's Aid Society miss this deadline, the judge may extend it if he thinks there is good reason for the extension. The decision of the county court judge may in turn be appealed to the Court of Appeal.

What happens if the family of a Society ward cannot be rehabilitated?

The judge can make the child a Crown ward. Crown wardship lasts until age 18 but can be extended to 21 for a reason such as further education. A parent may apply at any time to have a Crown wardship ended and the child returned home. This may happen if family circumstances have changed. It will never be done, however, if the child is living with people who have formally declared the wish to adopt the child. Under Crown wardship, it is not necessary for a parent to give permission for adoption.

Can parents have access to a child who has been made a ward?

Yes, visiting privileges can be granted if parents apply to the Family Court. If such privileges are denied the parents can reapply if the circumstances of the child or of the parents change.

Can anyone attempt to induce a ward to leave?

No. If this is done, or if someone visits, writes or telephones the child

without permission, the Society can lay charges against the person. If found guilty, the person can be fined up to \$500 and imprisoned for up to one year.

Who can inform the authorities about child neglect or abuse?

Everyone has a duty to inform the Children's Aid Society or the Crown Attorney's Office if he or she knows of a child who is abandoned, ill-treated or is in need of protection. If you provide this type of information it can be done confidentially. You cannot be sued unless you give the information with malicious intent or without reasonable cause.

What can happen to me if I neglect my children?

If you abandon, desert, or treat a child cruelly, or leave a child under ten years of age unsupervised for an unreasonable length of time, you may be subject to a fine and may also be imprisoned for up to a year. If you abandon a child so that his or her life or health is endangered, you are liable for up to two years' imprisonment.

The usual official policy is to eliminate the cause of these problems rather than lay charges, but charges may be laid in certain cases.

Where can I obtain help if I cannot look after my children for a time?

If you are temporarily unable to care for your children or a child has special needs you are unable to meet, you may make an agreement with the Children's Aid Society to place the children in their care for an agreed upon period of time.

You may terminate the agreement upon 15 days notice and the child will be returned to you, unless an application is brought before the family court to determine if the child is in need of further protection.

How do I go about adopting a child?

You must first get the approval of the Children's Aid Society, even if the child is being adopted privately or by relatives. Before approval is given, the Society conducts an investigation to make sure you are suitable and that adoption is in the child's best interests.

The child must live with you and your husband for six months before you can adopt him or her.

On adoption, the child assumes the surname of the adopting parents. The given name may also be changed. The child becomes, for all purposes, the child of the adoptive parents, as if born to them.

Can a single person adopt a child?

At the present time, the law permits a widowed, divorced or unmarried person to adopt only under exceptional circumstances.

How is custody or guardianship of children decided?

In the past, the father had the right to claim custody of children. Now both parents have equal rights, although the father retains the right to determine the religion of a child.

If parents are no longer living together, the court may grant custody of the child to either parent or to a third person. The decision is made on the basis of the child's best interests.

Most often young children will be put in the custody of their mother unless the father can prove the mother is unfit to look after the children. Usually the parent not receiving custody will be given visiting rights.

When is a child "illegitimate"?

A child is illegitimate if he or she is not the offspring of people who are married to each other. Therefore, children born to unmarried mothers or

as the result of adultery are considered illegitimate. If a child is born when the mother is married, the law presumes that her husband is the child's father, unless there is proof that someone else is the father. Children of *voidable* marriages are considered legitimate. So, too, in some but not all cases, are children born with *void* marriages.

What problems can illegitimacy cause?

Beyond the social stigma, which has decreased considerably in recent years, the major problem is inheritances.

In the past, courts have tended to interpret references to "children" in wills as meaning only legitimate children. This meant that unless a will referred to illegitimate children by name they would not inherit anything under it. The attitude of the courts is beginning to change somewhat in respect to wills, but the change has not yet had any great effect on the interpretation of statutes. Thus, for example, an illegitimate child cannot receive support under the Deserted Wives and Children's Maintenance Act or under the Dependents' Relief Act. Also in the absence of a will, an illegitimate child cannot inherit anything from his or her father or from other relatives except the mother. Even then, the illegitimate child cannot inherit from her if she has other legitimate children.

How can parents legitimize a child?

If the parents of an illegitimate child marry, the child becomes legitimate. To ensure that the records are changed and the child can obtain a birth certificate showing its legitimacy, the parents must fill out legitimization forms available from the office of the provincial Registrar General.

If a mother of an out-of-wedlock child marries a man who is not the child's father and her husband adopts the child, the child then becomes legitimate. However, a couple cannot adopt a child if they are not married to each other.

Whose surname does an illegitimate child take?

At birth, the child is registered under the surname of the mother unless both parents wish the father's name to appear on the birth certificate, and if the father acknowledges himself to be the father by statutory declaration. In that case, the child must take the father's name or a hyphenated name combining both parents' names with the father's name coming first.

Can the father of an illegitimate child be forced to support the child?

The court can order him to do so—if he does not make private arrangements for support or if he agrees to support the illegitimate child but fails to make payments. In such cases, a judge can make an affiliation order declaring the alleged father to be the actual father of the child and requiring him to help maintain the child until 16 years of age. The Children's Aid Society can advise the mother about support arrangements and court procedures.

Although the father may be supporting his illegitimate child, his right to custody is secondary to that of the mother and his consent is not required for adoption unless the child also lives with him. The father, however, has to be notified of wardship proceedings if an affiliation order has been made.

An application for an affiliation order must be made within two years of the birth of the child or within one year of any action on the part of the man that indicates that he acknowledges himself to be the child's father. If the father was out of the province at the end of the two years following the birth, the order may be made anytime within one year of his return to Ontario.

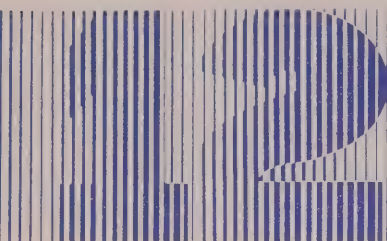
When can children be taken to court?

Children under 16 can be brought before juvenile court if they commit an act that would be an offense if committed by an adult. This includes any breach of the criminal code.

They can also be brought to court if they violate any provincial statute or municipal by-law or if they are guilty of sexual immorality or any similar form of vice.

A child can also be brought before the court if the parents or guardians are unable to control the child or provide for the child's needs.

The child may be brought before the court as a child in need of protection with the consent of the person in whose charge he or she is, or upon application of the Children's Aid Society.



WELFARE

What kinds of welfare are available in Ontario?

There are two kinds—Family Benefits, which is administered by the province, and General Welfare Assistance, which is operated by municipalities.

When am I eligible for Family Benefits?

You may be eligible if you are a person in need in any of the following circumstances:

- If you are 65 or older and not eligible for Old Age Security or an allowance under the Ontario Guaranteed Annual Income Act
- If you are a woman between the ages of 60 and 65 and your husband is getting Old Age Security or Guaranteed Annual Income Supplement
- If you are a woman between the ages of 60 and 65 and you are unmarried, a widow, divorced, deserted for more than three months, separated from your husband for more than five years, or your husband is in prison or living in an institution
- If you are 18 or older and are disabled, blind or permanently unemployable and not eligible for O.A.S. or an allowance under the Ontario Guaranteed Annual Income Act.
- If you are a mother raising children alone because you are a widow, an unwed mother, divorced, deserted or your husband is in prison or is living in an institution
- If you are caring for a foster child whose natural parents are unable to contribute to his or her support.

If you are a single person you apply for Family Benefits in your own right. In family situations it is the head of the family who must be eligible for Family Benefits and who must apply for them. Married couples (including common-law couples) with or without children are considered as families when applying for benefits.

What is the limit on my financial assets if I am to be eligible for Family Benefits?

When you apply, if you are single you can have no more than \$1,500 in liquid assets (cash, bank accounts, stocks, bonds, etc.) plus \$1,000 for the first dependent child and \$300 for any other dependent children. A married couple can have only \$2,500 in joint assets, plus \$300 for each dependent child.

In defining what constitutes a liquid asset, each case is looked at individually.

How much do Family Benefits pay?

This will vary according to circumstances. The amount is the difference between your income and certain expenses outlined in the Act. In addition, free prescription drugs, medical and hospital service are given to everyone receiving Family Benefits. Free dental care is available for families with dependent children.

Eye-glasses and hearing aids are also available to all recipients of Family Benefits and beneficiaries.

Where do I apply for Family Benefits?

To apply, or to get more information about Family Benefits, contact the nearest regional office of the Ministry of Community and Social Services.

How soon after I apply do benefits start?

It usually takes at least a month. If you are in need of money immediately you should apply for General Welfare Assistance from your municipality.

Can I appeal a decision about Family Benefits?

Yes. If you are not happy with the decision, you should write within ten days to the Director of Provincial Benefits, explaining why you believe you should be given Family Benefits or why the amount of the benefits should be changed. The Director will review your case and inform you of the decision.

If you are still not satisfied, you can write to the Board of Review within 30 days, and it will investigate your case.

You do not have to pay any fee to appeal a decision about Family Benefits.

Can I earn anything and still receive Family Benefits?

As a single person you may earn up to \$50 a month. If you earn more, the equivalent of 75% of what you earn after the first \$50 will be deducted from your benefits. A woman with dependent children who qualifies for Family Benefits cannot work longer than 120 hours a month. If you have a family you may earn \$100 without losing a portion of your assistance. After the first \$100, 75% of the excess will be deducted from your benefits. There is a further exemption for all recipients of \$10.00 for the recipient and \$5.00 for each beneficiary up to a maximum of \$25.00 monthly which is referred to as work related expenses.

When should I apply for General Welfare Assistance?

If you need financial assistance immediately or temporarily. Most cities and towns have two types of financial aid available. One is general assistance in the form of a weekly or monthly allowance. The other is extra money for special needs.

Who is eligible for General Welfare Assistance?

Any single person or head of a family in the following circumstances:

- Out of work and looking for a job
- A mother raising children alone
- Sick, disabled or blind
- Elderly
- A foster parent.

Municipal welfare administrators have broad discretion to grant or refuse to grant General Assistance. Besides the circumstances listed above, they consider an applicant's income and assets.

How much money can I have and still receive General Welfare?

The amount of allowable assets may vary from municipality to municipality. You should check with your local welfare office. If you are a single person you cannot earn more than \$50 a month without losing a portion of your welfare benefits. If you are the head of a family you may earn up to \$100 a month.

What does General Assistance pay for?

It will pay for certain basic living expenses. These include food, clothing, personal needs, special diets, household supplies, shelter, utilities, fuel, nursing home and foster child care.

Where does a person apply for General Assistance?

At your local municipal social services welfare office.

Are any other types of welfare aid available to people in need?

Yes. Special Assistance and Supplementary Aid are also available under certain circumstances from your local social service office.

What is Special Assistance?

If you are in special financial need because you are unemployed, disabled, elderly, a foster child, a mother raising children alone or an employed person in financial difficulty, you may be eligible for Special Assistance. You are eligible even if you are already receiving General Welfare.

This pays the costs of moving, prescribed drugs, funerals, surgical supplies, dental services, optical services, artificial limbs, eye glasses, hearing aids and similar items, vocational training, and transportation services to such places as a doctor's office or to job interviews. It also provides spending money for people in nursing homes.

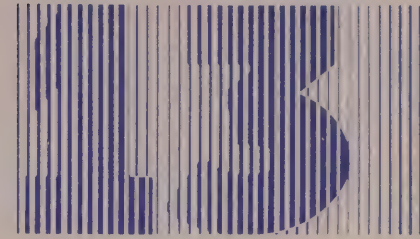
If your application for special aid is turned down, the decision cannot be appealed.

What is Supplementary Aid?

This provides additional aid for people already receiving Family Benefits, Old Age Security or a Training Allowance under the Ontario Vocational Rehabilitation Services Act. It cannot, however, be paid to a recipient of General Welfare.

It pays for optical services, dental services or any other extraordinary need. It will also pay a rent supplement to help a person pay high rent costs.

You are advised to apply if you anticipate a need, before the need actually arises, and you cannot appeal the decision if you are rejected.



PROPERTY

Can a married woman own property?

Until 1884, when a woman married, all her possessions became her husband's. So did all the property she acquired during the marriage. Property laws were based on the belief that a husband and wife were one, and that one was the husband. Today, a wife has the same rights to hold and dispose of property as a single woman. All wages and property acquired from her employment are hers. She can sue her husband for damages if he interferes with her property. Her husband, however, cannot sue the wife for damage to his property.

How can property be owned?

In a marriage, or indeed in any relationship, property can be held by an individual or "in common". The usual ways of holding property in common are by joint tenancy or tenancy in common.

What is the difference between joint tenancy and tenancy in common?

They are much the same during life. The major difference occurs when one of the co-owners dies. In a joint tenancy, the survivor becomes the owner of the entire property. In a tenancy in common, the survivor retains her or his interest, and the heirs of the deceased get ownership of the deceased's share.

How is ownership determined?

The law assumes the true owner of the property to be the person or people who paid for it. However, since the passing of the Family Law Reform Act in Ontario, a contribution made by one spouse in work, money or money's worth to property in the name of the other will now be treated as if made by one individual to another outside of marriage. Although this clause confers no new positive rights to share in property owned by a spouse, its practical effect is to clear the way for a spouse's non-monetary contribution to be recognized through the award of an interest in the property, or compensation, like that of any other individual. The term property is used in its broadest sense and includes any property to which a contribution has been made, such as a family business or a matrimonial home.

What happens if my husband puts property he paid for in my name?

With the coming into force of the Family Law Reform Act on July 10, 1975, there is a presumption that you hold the property in trust for him. The presumption of gift which arose when a husband placed property in his wife's name no longer applies. The same rule applies if you buy property and put it in your husband's name. The law does not presume the property belongs to your husband.

If, on the other hand, it is clear that one spouse intended to make a gift to the other, ownership of the property will change. With gifts of property, it is advisable to show changed ownership both by words indicating any intent to make a gift and by a change of control. This can be difficult if the couple lives together and the property is used by both. Therefore, records of gifts of property should be made in writing and, for instance, any insurance on this property should be in the new owner's name and paid for by the new owner.

Where property is placed in the name of a husband and wife as joint tenants, or where money is on deposit in a bank, trust company, or similar institution in the name of both husband and wife, the Family Law Reform Act creates a new presumption that the property is

co-owned, whether or not there has been contribution by both spouses.

Do the new rules apply to property acquired before the Family Law Reform Act came into effect on July 10, 1975?

At present this is uncertain; the answer will depend on a case currently before the Supreme Court of Canada. However the new family law reforms which the Government is introducing will apply to all family property, whenever acquired.

If I am happily married, I don't have to worry too much about property laws, do I?

It's not only during separation or divorce that questions about ownership come up. These questions can be raised by other people at other times—for instance, in debt actions or in the probate of a will. Even today, the courts assume that property acquired during a marriage that has not clearly been put in the wife's name is acquired by the husband, especially if the wife is earning less than he is.

What can I do to insure my property rights?

If joint ownership is desired in the case of real estate, the deed should clearly state that joint ownership is intended. You should keep records of major purchases to make clear the intent of joint ownership. You should keep your pay stubs as well as receipts or cheque stubs for purchases for which you have paid. All payments for family property should be made out of an account to which both partners contribute.

What can I do if I want to retain individual ownership of certain property?

In such cases, it is important that you keep records of your purchases and that you pay for such purchases with your own money. If the husband makes a gift of property to his wife, the gift should be made in writing with a seal attached. (A seal can be bought cheaply in most stationery stores. It indicates that although the recipient has not made payment for the gift, the donor intends her to have ownership of it.) People should proceed with caution regarding ownership of property. The law is extremely complex and constantly changing. Legal advice is worth getting if any questions or problems arise.

What happens to property if the owner dies without a will?

If her husband dies, the widow can choose between her dower rights or the share of property she would receive under the Devolution of Estates Act. This choice must be made in writing and given to the administrator of the husband's estate. (The widow will often be the administrator herself.)

If you do not give such written notice, you will be deemed to have chosen to take the dower interest. The administrator may—by a written notice—require you to indicate your choice in writing within six months of the time you receive the notice. If the administrator does not properly notify you, you may make the choice any time during your life.

A man whose wife dies without a will is entitled to choose in writing between his curtesy interest and the rights to his wife's land given by the Devolution of Estates Act. He has a maximum of six months after his wife's death to make his decision. If he takes no action within this period he will receive his share of the lands under the Devolution of Estates Act, instead of the curtesy.

What are a widow's dower rights?

Dower rights are something left over from medieval times. Under them,

when her husband dies, a widow is entitled to a one-third life interest in all his real estate holdings. When the widow, herself, dies this property goes to the husband's heirs.

Dower is seldom worth much to today's widow. It applies only to real property—land and houses—owned by the husband. And it is only a life interest, and not outright ownership.

Dower is a consideration during marriage, however. Before a husband can sell any property he owns, his wife must first agree in writing to "bar her dower"—that is, give up her dower rights. Otherwise, if the property is sold, her dower rights remain attached to it. Similarly, a husband cannot take away his wife's dower rights in his will without her consent. Nor can he, without her consent, make any agreement about property he owns that affects his wife's dower rights.

The wife has no dower rights to property which the husband owns in joint tenancy with someone other than his wife.

Can a wife lose her dower rights?

She automatically loses them on divorce. Similarly, if she lives in adultery—that is, if she lives in a common-law relationship with another man or engages in prostitution—she loses her dower rights. She does not lose them, however, if her adultery consists of isolated incidents. It is also possible for a husband to deny his wife's claim to her dower rights by arranging to have his land held by a corporation which he controls or by using a technical legal form called a "Deed to Uses".

Does a husband have anything similar to dower rights?

Yes, he has curtesy rights.

Curtsey is a seldom used concept originating from the same time as dower rights. Curtsey gives a widower a life interest in his deceased wife's property, in much the same way as dower rights give a widow a life interest in her deceased husband's property, except that curtesy gives a widower a life interest in *all* his wife's land instead of just a third as in the case of dower.

One important difference between dower and curtesy is that during her life a wife can sell her property without her husband's consent. She can also state in her will that her husband is not to receive her property, and this instruction will be obeyed. Where a wife dies without a will the widower has a right to select curtesy rather than the property he would receive under the Devolution of Estates Act. If he does choose to take curtesy he will receive not only a life interest in his wife's land, but all of her property that is not land will become his permanently, instead of the more limited share that he would receive under the Devolution of Estates Act. Wives have no equivalent right to all their dead husband's personal property if they choose to take dower.

What do spouses get under the Devolution of Estates Act?

The Devolution of Estates Act applies when a person leaves no will.

Under the Act a widow gets all of her husband's estate if it is worth less than \$50,000. If it is worth more, she gets the first \$50,000 and the remainder is distributed among her and her children so that the widow receives at least one-third of the value of the rest of the estate.

If the husband owned real estate the widow must tell the administrator of her husband's estate whether she prefers to take only her share under the Devolution of Estates Act, or whether she wants to retain her dower interest as well. If she chooses to retain her dower, she will lose her absolute right to the first \$50,000 of her husband's estate, as well as the right to any interest in the value of his real estate, apart from her dower right to a life interest in one-third of it. Since the rights to the first \$50,000 and a minimum of one-third of the value of the husband's real

estate under the Devolution of Estates Act will almost always be worth more than the dower interest, most widows would be better off if they gave up their dower rights after their husband's death.

Under the Devolution of Estates Act a husband is also entitled to the first \$50,000 of his wife's estate if she dies without a will, as well as a minimum of at least one-third of the balance of his wife's property. He may also elect between curtesy and his rights under the Act. Although the law is unclear on this point, if he elects to take curtesy, in the form of a life interest in all (not one-third) of his wife's land, he is probably also entitled to take a permanent interest in all of his wife's property other than land.

If the wife has very large amounts of cash, stocks, bonds, and so on, and only a small amount of real estate, her husband may be better off electing for curtesy than he would be under the Devolution of Estates Act.

What do children get if their parents die without a will?

The children share equally any part of a parent's estate that does not go to the other parent. If both parents are dead the children share the whole estate.

Is it advisable to have a will?

Yes. A will allows you to dispose of your property in the ways you think best, benefiting those people you wish to. A will allows you to appoint the person you want to administer your estate—someone you believe will be fair and will carry out your wishes.

What can a woman do if she is left out of her husband's will?

If she is left out or if the will doesn't make adequate provision for her, her children under 16, or her children over 16 who can't earn a living because of illness or infirmity, she can apply to a judge of the Surrogate (County) Court in the county where the will is being administered.

This application must be made within three months of the husband's death. A judge has power to extend this time unless all the property under the will has been distributed. The judge can order a lump sum payment or installment payments be made to the wife and children from the deceased husband's estate. An interim award may be made pending the final award. The amounts received in this way will never exceed the amounts that would have been received if the husband had died without a will.

The court will not accept such an application if, at the time of the husband's death, the wife was not living with him or if she has done anything that would disentitle her to alimony if he were alive—such as desertion, uncondoned adultery, cruelty, or the acceptance of a lump sum of money as a complete discharge of her husband's obligations.

A widower may also apply under this Act. He is not expressly disqualified from receiving payments by committing any of the acts that would automatically disqualify his wife. Payments are seldom made to him however, but may well be made to the children.

LEGAL AID

What is Legal Aid?

It is a plan designed to make sure that everyone can get the legal advice they need, whether they can afford to pay for it or not. Every resident of Ontario (and in some cases, non-residents) can apply for Legal Aid.

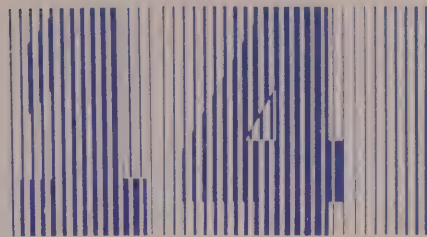
How does a person obtain Legal Aid?

The application should be made through either your lawyer or the area director of the Ontario Legal Aid Plan in your county. Your application will be referred to the Ontario Ministry of Community and Social Services which will investigate your income, expenses and assets. If you qualify, you will be given a Legal Aid Certificate. The certificate covers either all or a portion of your legal expenses, depending on your needs. Once you receive the certificate, you can take it to any lawyer of your choice who participates in the Legal Aid Plan. Depending upon your financial resources, you may be asked to repay part or all of the aid you have received.

What is the relationship between a lawyer and a Legal Aid client?

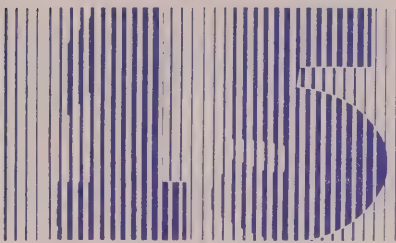
It is exactly the same as that of clients who are paying the legal costs themselves. Neither the court nor the public will know that you are receiving Legal Aid. It is a private matter between you and your lawyer.

**LAW AND THE
WOMAN IN ONTARIO**



LEGAL AID

LAW AND THE WOMAN IN ONTARIO



LAW REFORM

LAW REFORM

How can a person influence the law?

By making her views known to her member of parliament, her member of the legislature and to organizations set up to review the law.

In recent years, the governments of both Canada and Ontario have appointed law reform commissions to review and update federal and provincial laws.

If you wish to express your opinion about the revision of federal laws, you can make a submission to:

The Law Reform Commission of Canada,
130 Albert Street,
Ottawa, Ontario,
K1A 0L6.

Submissions about revisions to provincial laws should be addressed to:

The Ontario Law Reform Commission,
18 King Street East, 16th Floor,
Toronto, Ontario,
M5C 1C5

The Attorney General has introduced legislation that would make substantial changes in the law relating to property rights and support obligations between spouses and persons living in a common-law relationship. Legislation has also been introduced that would affect the succession rights of such persons and of illegitimate children upon the death of a relation. Information concerning these proposals can be obtained from and suggestions about them can be made to:

Policy Development Division
Ministry of the Attorney General
17th Floor
18 King Street East
Toronto, Ontario M5C 1C5

If you are concerned about the Ontario government's policy toward women, and want to make your views known, you should write to:

The Ontario Status of Women Council,
801 Bay Street, 3rd Floor,
Toronto, Ontario,
M5S 1Z1.

The Council will also be able to give you a summary which it has prepared of the Ontario Law Reform Commission's *Report on Family Property Law* and its recommendations.

If you want to reply to the recommendations of the Royal Commission on the Status of Women, or to comment on federal laws that affect women, the place to write is:

The Advisory Council on the Status of Women,
Box 1541, Station B,
Ottawa, Ontario,
K1P 5R5.

